UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,

Plaintiffs,

v. 10-CV-4518 (BSJ)(GWG)

ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants. Conference

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New York, N.Y.
October 31, 2011
11:42 a.m.

Before:

HON. GABRIEL W. GORENSTEIN,

Magistrate Judge

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ALSO PRESENT: DAVID JONES, AUSA
Civil Division, US Attorney's Office

(In open court)

(Case called)

(Appearances noted)

THE COURT: I guess I wanted to begin with a relatively minor procedural issue, which has to do with the confidentiality order, filings and what's public and what's not. I gather that the name of the Iranian bank and the Italian bank have been redacted from everything on the theory that that's subject to the District of Columbia confidentiality order. But this is a public courtroom. We now have a notice of appearance on behalf of two banks. Is there some reason we can't modify whatever's in place to allow the Italian and the Iranian bank's names to not be confidential? They've made motions. They're here. Anyone see a problem with that?

Since the two of you are here, I'm addressing you.

MR. LINDSEY: Your Honor, David Lindsey from Bank Markazi. The reason my client's name has been confidential up to now is because that -- the identity of my client came known due to the information from the Treasury Department, and it was the Treasury Department who asked Judge Lambert to enter the order that was entered, so we ourselves did not ask to be confidential, our name, but the Treasury Department asked for such, and so I would think we would need perhaps to ask OFAC before releasing or changing the terms of the confidentiality order.

THE COURT: Did they suggest that for your benefit or for the United States' benefit?

MR. LINDSEY: It's the statute, your Honor, providing for Treasury and Justice to assist judgment creditors -- in this situation to assist them in locating assets of the foreign sovereign, provides that OFAC or the Treasury may ask that the information given to those judgment creditors be kept confidential and that the courts shall enter a -- an order as such, and that was that statute that they were following.

THE COURT: But surely, they would only do that for the benefit of the privacy of the persons with assets; right?

MR. LINDSEY: I'm not quite sure why OFAC wants all of that confidential, frankly, sir, other than they do not want that information -- how they go about finding information, I suppose, and information they deem to be confidential, but I -- I wasn't part of that thinking.

THE COURT: Let's hear from someone from the US Attorney's Office. Someone just stood up in the back. Perhaps you can note your appearance. Actually, we don't need a microphone. Just stand there.

MR. JONES: Thank you, your Honor. David Jones.

THE COURT: You don't need the microphone.

MR. JONES: David Jones with the Civil Division of the US Attorney's Office, and I actually am asking not to note an appearance because appearing requires the blessing of the

Assistant Attorney General, which I don't have, so I'm here in an observing capacity, and I can't speak to the representations that were just made. I'm also further hindered by the fact that the main assistant responsible for this and has been monitoring it is covering a family medical emergency, so I am a backup person with no authorization --

THE COURT: A backup person, with no authorization, and no appearance.

MR. JONES: Yes. Though I'm happy to have my nonappearance noted. And I'll say in general, we're in touch with OFAC, we're monitoring the case, Judge Jones earlier entered an order specifically directing that pleadings be sent to us to facilitate that, and so --

THE COURT: Could you send me a letter with OFAC's position or somebody on this topic, perhaps?

MR. JONES: On the topic of confidentiality, your Honor?

THE COURT: Just with the names of the two banks, because I think it's going to make filings all that more complicated.

MR. JONES: Yeah, I understand, your Honor. Let me -- I'll seek the appropriate blessings to do so and just -- the request specifically is just to see if we have any objection to publicly --

THE COURT: The names of these two banks being

unsealed.

MR. JONES: Okay.

THE COURT: Not account numbers, not anything else.

MR. JONES: Yes. I can relay that and promptly notify the court what the reaction is. I'm sorry for the headache, your Honor. I am -- I know it gets cumbersome.

THE COURT: It's okay. To my mind the cat's out of the bag. This is a public courtroom. I've not sealed it. I don't know who's here, but whoever's here now knows the information and could put it up in the internet. So whether that should or shouldn't have happened, I don't know, but it's hard to see what the interest is at this point. All right.

MR. JONES: Your Honor, one thing that just may help people understand why I'm here and the nature of the government's interest, ordinarily, as a theoretical matter, these types of proceedings shouldn't require government participation or appearance, as I understand it, but it's navigating awfully closely to matters of concern, including the operation of the economics sanction regime and for that reason we monitor and then ultimately would determine if there's anything that requires us to come in. But otherwise we have a passive role.

THE COURT: Okay. Thank you.

MR. JONES: Thank you.

MR. LINDSEY: Your Honor?

THE COURT: Hold on. Thank you, Mr. Jones. Before you spoke, I think you were going to say something?

MR. VOGEL: Yes, your Honor. Liviu Vogel, the attorney for the Peterson plaintiffs. I just want to correct one thing Mr. Lindsey said. The identity of Banca UBAE and Markazi were not disclosed in the original response from OFAC that was made subject to protective order. That information became known to us when Clearstream made a motion before the court back in June of 2008 to release $250 million worth of bonds because they claimed that they had -- that the former owner of then Bank Markazi had already transferred them to third parties and they were no longer in the possession and control of Clearstream. And so therefore, it was not OFAC who asked for confidentiality with respect to the identity of the two banks. In OFAC's disclosure that was given to us on June 11th, 2008, they identified these entities as anonymous entities, and they do not give the name of them or their identities.

MR. LINDSEY: Your Honor, if I may?

THE COURT: Yes.

MR. LINDSEY: Actually, OFAC did provide that information in a second submission.

MR. VOGEL: Correct.

MR. LINDSEY: It wasn't in the first one but it was in the second one.

Your Honor, if I may point out one thing, I know this is a headache, but technically folks shouldn't be in the room unless they've signed the confidentiality agreement. And I just state that. I understand your frustration.

THE COURT: Well, it's not frustration. I mean, I don't know -- I mean, I set a public proceeding, which is all I intend to have in this case. I'll see what else I can do. I guess there could be a motion to seal the courtroom. You folks entered, as I totally understand it, a notice of appearance, but prior to your doing that, I never said anything about the courtroom being sealed.

MR. LINDSEY: I understand, your Honor. I just wanted to --

THE COURT: So I think the cat is out of the bag, not because of anything that the court did.

MR. COLELLA: Your Honor, if I may be heard briefly.

THE COURT: Yes.

MR. COLELLA: I'm sure you're aware there's a pending motion before Judge Jones on this very issue, and it hasn't been decided.

THE COURT: On solely the names of these two entities?

MR. COLELLA: Well, it deals with the -- disclosing the contents of the Italian proceedings.

THE COURT: That's not what I'm talking about. I'm just talking about the names of these two banks; that's all.

Okay. Well, we're going to proceed, as I said, in an open courtroom. If someone thinks they have to say something beyond the names of those two banks that's confidential, then they're going to have to either not say it -- I can't imagine I'm going to seal the courtroom at this point. I don't know what the procedure's going to be, but the courtroom is not sealed.

Okay. Let's try to move along to the merits of why we're here today. I think I need to have a little more understanding about what's going on in this case in order to resolve what seems to be the main dispute between the parties having to do with where we go from here, and I guess I think I would want actually to start with the first letter I got. That was from the White & Case people.

Let me try giving my sense of what's going on and then I'll let the main parties correct me.

We had the restraint and then the motion to vacate the restraint, which I gather was done in a number of filings. That was in 2008. Then in 2010 there was a complaint by the plaintiffs for a turnover proceeding in which Clearstream, Citibank, and Bank Markazi and Banca UBAE and Iran were named in the amended complaint. Bank Markazi and UBAE have moved to dismiss those turnover proceedings, and then we have an interpleader action by Citibank, which has now named other interpleader defendants I guess who are aligned with

plaintiffs.

My first question is: I know that there is a jurisdictional argument that was made in the motion to vacate the restraint, though I've not seen any of the briefing on it. And my question is: The jurisdictional argument has to do with whether, at least in part, whether Clearstream is a securities intermediary in which the judgment debtor's account is maintained. My question, first for Clearstream people, not for anyone else: Is it your view that if you were successful on that, all the rest of this goes away or only some of it?

MR. PANOPOULOS: Good morning, your Honor. Frank Panopoulos.

We need to parse that out. There's a jurisdictional motion where we challenge personal jurisdiction over Clearstream in New York, but that is not necessary to decide the motions to vacate the restraints, essentially because under New York law, any party who has an interest in the restraints can appear to challenge the restraints and to turn over all the restraints, and they don't waive personal jurisdiction arguments.

The UCC argument that Clearstream has made and the -- and the situs argument that plaintiffs make, if they're decided in Clearstream's favor, the restraints and the turnover goes away. But -- and our motions assume, for the purpose of the situs argument, that even if we were found to be in New York,

the situs of the -- of the intangible assets that are at issue are not here but in Luxembourg.

THE COURT: Okay. So -- hold on. If you prevailed on that argument, there's obviously no turnover proceeding and therefore, there's no motion to dismiss. The other banks do not need to move to dismiss the turnover proceeding. But the interpleader action was not filed by you; it was filed by Citibank?

MR. PANOPOULOS: It was filed by Citibank, and the reason, if I may -- I mean, Citibank can join, but -- in a nutshell, there's a lot of judgment creditors that have judgments against Iran and they're filing turnover actions and, you know, restraints against Clearstream, against Citibank, and rather than have all these different actions where you have a, you know, a duplication of the same factual and legal issues that are at issue here, you know, we thought it would be better to bring everybody to one party, and that's basically what the interpleader did.

THE COURT: So the interpleader is against anyone that you could think of that had a judgment against Iran, only people who got a judgment in the marine barracks case? Or Citibank was --

MR. PANOPOULOS: No, these are -- I'll let Citibank discuss it, but the judgment creditors are not just with respect to the 1983 bombing of the marine barracks in Beirut.

There are also other judgment creditors of Iran from other bombings. But I'll let Citibank answer your question as to who was interpleaded.

THE COURT: Okay. And while you're answering my question, I guess, I kind of wonder how it came about that this happened, because normally, if I have a piece of property belonging to a judgment debtor and someone comes up to me and says, "You know what, here's my judgment, give me that piece of property," I'm under no obligation to figure out if there are other judgment creditors out there. I'm completely held harmless by just obeying the procedures with respect to that one judgment creditor. I don't have to go around filing interpleader actions every time that happens. So if you can also answer the question of why that happened here.

MS. SCHNEIER: Okay. Your Honor, this goes back to Judge Jones' June 27th order and she directed Citibank to basically bring in anyone who had served Citibank or Clearstream some legal document advising that it claimed a legal interest in the property; in other words, not just someone who had a judgment but who served us a writ of execution or, you know, assortment of other documents. So you're right; there could be other judgment creditors against Iran, but they have not put us on notice that they are claiming an interest in these specific assets, and in fact, when the case was just at the miscellaneous stage, some of these

judgment creditors who had been brought in had actually sought to intervene in that miscellaneous action. So Judge Jones is also aware that there were other judgment creditors who had an interest in this case and just maybe -- you can cut me off if this is too much information, but Judge Jones tried to make sure that all of the judgment creditors who had an interest in these specific assets of Iran as opposed to other, what's called blocked assets of Iran were before her, and there are other proceedings involving other assets actually before Judge Patterson, but this set is before her and she wanted all of these parties brought in and that's what we did, in terms that we were notified by a writ of execution, *lis pendens* or some other legal piece of paper that they had an interest.

THE COURT: Okay. So now my original question, which is: If Clearstream is successful on its UCC argument, where does that leave your interest here?

MS. SCHNEIER: Well, we're -- well, if the court finds that Clearstream is successful, then Citibank is, you know, further up the chain and the same UCC arguments apply to us because we have, you know, absolutely, you know, no relationship with any of these other parties and, you know, assuming that's what the court finds, there would be, I assume, a discharge of, you know, Citibank for complying with the court's order.

THE COURT: Okay. That's what I thought.

Let me hear from plaintiffs on this point.

MR. VOGEL: Thank you, your Honor. The UCC basis for naming Clearstream as the garnishee is not the -- is not the only basis for naming a particular party garnishee here, so if they're successful on that issue, it only knocks out one argument. There are at least three other arguments that make Citibank a proper garnishee, so if Clearstream wasn't even in this case, we'd still have a proper claim against Citibank. They are raised in the various motion papers that have been filed, and that includes TRIA, it includes --

THE COURT: TRIA?

MR. VOGEL: Yes. The Foreign Sovereign Immunities Act Section 1610(f)(1)(A) and it also includes a creditor's bill cause of action which we asserted in our amended turnover complaint.

THE COURT: What's TRIA?

MR. VOGEL: TRIA is a footnote to 1610. It's the Terrorist Risk Insurance Act. And it basically says that any asset that is a blocked asset, it can be used to satisfy a judgment such as those that are held by the judgment creditors here for terrorist acts, and the way that an interest in property is defined under the TRIA cases and TRIA regulations is a much more loose definition, a much more broad definition than the UCC analysis under a securities intermediary and securities entitlement, and so therefore I would argue that the

TRIA or 1610(f)(1)(A), which would use the same broad analysis of -- and definition of what a property interest is, as well as a creditor's bill, would use such a broad interpretation that Citibank would still be a proper garnishee and the motion, if successful under the UCC, would not be dispositive.

THE COURT: Okay. I assume you disagree with that?

MS. SCHNEIER: I do. I mean, I think the TRIA argument is also addressed in the papers on the motions to vacate the restraint. The -- I don't know if you want to hear --

THE COURT: I don't want the merits.

MS. SCHNEIER: -- the merits of it, but some of this is a little bit different to me, but I think most of these issues are addressed in the papers. I think it's all sort of wrapped up together. The creditor's bill argument is something I don't think I've ever heard Mr. Vogel quite articulate, but I know the TRIA and the FSIA arguments are addressed in those -- in those papers. The motion to vacate the restraints sort of touched on a lot of issues in the case.

THE COURT: Okay.

MR. PANOPOULOS: Your Honor?

THE COURT: Yes.

MR. PANOPOULOS: If it helps, the -- after July 2010, when Judge Jones ordered further briefing on the UCC issues and the other issues raised by the plaintiffs and the defense --

and Clearstream, there were five sets of briefs, three by Clearstream, two by Mr. Vogel on behalf of the Peterson plaintiffs, that crystallized the issues for the court, and in that briefing we addressed the TRIA argument, and that's where it could be found.

THE COURT: Right. Well, at this point I wasn't asking where it is. What I'm trying to do is determine what some of the threshold issues are, determine what, if any, discovery goes to those threshold issues, and then determine what threshold issues are and what discovery goes with that, because the big dispute today, I mean, is discovery.

MR. PANOPOULOS: Right, I'm prepared to address that, and -- I'm prepared to address that. It will take me maybe ten minutes to walk the court through that, to discuss the threshold issues.

THE COURT: Okay. Well, why don't we start with you doing that and we'll let everyone respond and see where we are.

MR. PANOPOULOS: So the issues that the court has to decide on the motion that was referred to the court, the motion to vacate, are legal issues. The first legal issue is --

THE COURT: They don't happen to be the same four issues as Mr. Vogel's, do they?

MR. PANOPOULOS: No, they're not.

THE COURT: Okay. Go ahead.

MR. PANOPOULOS: I mean, the first legal issue, to put

it succinctly, is whether the kind of intangible property interests that can be restrained under New York law, right, is coextensive with the property interest created by the UCC under Article VIII, which governs security entitlements.

THE COURT: And that's for purposes of your UCC argument.

MR. PANOPOULOS: Of the UCC argument. And, you know, I can walk the court through the outline of the UCC argument or -- I can, or not. But --

THE COURT: I think not, because again, my --

MR. PANOPOULOS: Yes, I understand. But that's a legal issue.

The second issue is the situs -- what the plaintiffs call the situs argument, and the issue there, again, is a legal argument, and it's whether Bank Markazi's intangible property interest, which is the security entitlement, whether it's sited in Luxembourg or in New York. And there are -- there are sublegal issues under that, including whether the UCC supplants the common law situs rules, right, and by the way, you know, all the references to the UCC and all the arguments are in this last set of five briefs that were submitted in the case.

Another subargument under that is, you know, under the New York law, the situs of intangible properties is the location of where the intangible right is to be performed, the terms and conditions agreement which governs the account at

issue and governs the securities, the rights and duties to the securities entitlement, it's governed by Luxembourg law, so in any event, we argue that Luxembourg is the situs. Plaintiffs argue that nonetheless, the situs of the intangible right is here because Clearstream can be found here. And that's the *Harris v. Balk* argument. As I said before, even if we assume that Clearstream is found in New York -- and we don't concede that and there is a motion where we challenge personal jurisdiction, but you don't need to decide it for purposes of deciding this situs argument, which is plaintiff's alternative argument to the UCC argument -- even there, under *Harris*, under the rule of *Harris v. Balk* and the progeny -- and its progeny, the intangible property right of Markazi is -- still doesn't travel with Clearstream. It's not in New York, even if we're found to be here.

So now with respect to discovery on those legal issues, right, which is what plaintiffs basically raise -- their letter raises three "fact-intensive issues," all right? And, you know, the first one is that the knowledge of the beneficial ownership, they say they need discovery on the knowledge of beneficial ownership. There's -- that issue, the -- who the beneficial owner is, is not relevant to Clearstream's motions. It's not relevant to Clearstream's motions because our motion papers assume that Bank Markazi is the beneficial owner. What happened was, that in -- we put in

our first set of motions basically arguing that Clearstream and Citibank are not the proper garnishees, and Judge Jones issued an order in June of -- on June 23rd, 2009, saying she agreed that with respect to the securities entitlements that are in UBAE's account, Clearstream is not the proper garnishee. Now I won't go into the details, but the long and short of it is that but she considered whether the fraudulent conveyance argument changed the analysis, and so there was -- and that was what the further briefing was about. The fraudulent conveyance analysis doesn't change the analysis under the UCC or the situs argument, and for purposes of the argument, we've assumed in our papers that there was a fraudulent conveyance, the conveyances were transferred back to Bank Markazi's accounts, and that Bank Markazi is the beneficial owner. Assuming that, so there's no need for any discovery on beneficial ownership. And with respect to the fact of who the beneficial owner is, we have OFAC saying so in responses to a subpoena, a supplemental subpoena issued by plaintiffs in April of 2010, and Bank Markazi also has submitted papers saying that they're the beneficial owner. So we don't see why there's any need on discovery for beneficial ownership.

The next fact-intensive discovery that plaintiffs are asking for is the assets are located in Luxembourg, where UBAE opened the account. This is a legal issue under the UCC; right? Under the UCC -- and, you know, I won't cite to the

provisions, right -- a security entitlement is acquired by a customer when their account is credited with a position in the securities. All of this is in Luxembourg. When Clearstream appeared on June 27th, 2008, before Judge Koeltl to move to quash the -- to lift the restraints, we submitted and produced documents and testimony discussing the accounts, the opening of the accounts, the transfers at issue, and -- and the transfers at issue, and documenting the transfers at issue. These documents were then, you know, used by plaintiffs to go get discovery, they were used by plaintiffs in their -- in their motion papers, and most if not all of them are attached one way or the other to the motion papers. So those documents establish that the accounts, the UBAE accounts and the Bank Markazi accounts are opened in Luxembourg, and as far as we're concerned, that's an established fact, and I'm not even sure it's disputed. What is disputed by plaintiffs is that the situs is not in Luxembourg but is in New York. But that's a legal issue, not a intensive factual issue.

And then the third fact, you know, discovery fact-intensive issue they ask for, about or for, is that no activities relative to the assets occurred in New York, and what this means is that if you read their motion papers, in order to try and show that there's a nexus in New York with respect to Bank Markazi's, you know, property right, you have to look to the activities of the bond issuer, you have to look

to the activities of the banks who pay out the bond, you have to look at the activities of everybody except Clearstream and Bank Markazi, and what they do is they -- they accumulate all of -- all of this activity surrounding the bonds or the, you know, or the -- surrounding the bonds under the securities at issue and they say because of all of this activity, there's a nexus in New York for which we can claim that there's a situs to the intangible property right, and, you know, our argument is, as a matter of law you're wrong, because even if you assume all this activity, it's irrelevant to whether or not Bank Markazi's right travels with Clearstream, under your -- under your situs argument.

And just to -- and just to finish -- because I'm done for now, I guess -- is that what's at issue here are 20 -- are the entitlements in 20 securities. Basically what happens is that there's an issuer who issues a billion-dollar bond and different investors take positions in these bonds. Some take 10 million, some take a hundred million, some take 50 million. Bank Markazi had positions in these 20 bonds. Some of the positions were 50 million, some were a hundred million, some were 200 million. And so the bonds are not issued in paper so that, you know, Bank Markazi holds a piece of paper that says you have, you know, 50 million positions, a position of $50 million in this bond. It's all done electronically or what they call dematerialized, which means that the issuer issues a

bond that resides with the deposit -- depository trust in New York and everything after that is done electronically on book record. And so when I talk about bonds, I'm talking about the bonds that have been issued and the bonds in which the security entitlements have positions in.

THE COURT: Okay. So if I can sum up, on the issue of knowledge of beneficial ownership, Mr. Panopoulos, and the activities relevant to the assets occurring in New York, it seems like you're willing to assume the plaintiff's allegations on that front, that you had knowledge and that all the activities they claim that are going on in New York, that those actually happened; you just think that they're not legally relevant. Sticking to your second argument.

MR. PANOPOULOS: Yes.

THE COURT: Okay. It was less clear to me on the assets in Luxembourg argument. I think what you were saying is at this point no one really wants discovery or reasonably expects discovery on the issue of where the accounts were actually opened, the documents are sort of self-proving, and that anything that flows from that is a legal issue.

MR. PANOPOULOS: Except that the -- the issue of where the account is opened is defined and governed by the UCC, so you would start there. So it's a legal issue. The UCC points you to the account agreement. The account agreement is in evidence. It clearly says governed by Luxembourg law.

THE COURT: No one is disputing the specificity of the account agreement.

MR. PANOPOULOS: No one is at all, your Honor.

THE COURT: You think all you need for that argument is the account agreement, the only factual thing.

MR. PANOPOULOS: Yes. And if there is anything else, right, we think it's been -- it's there, and maybe they should tell the court what they need specifically and we can address the court.

THE COURT: Okay.

MR. PANOPOULOS: I'd also like to say, your Honor, please, that we only agree or assume plaintiff's facts for the purposes of this motion only.

THE COURT: Okay. So Mr. Vogel, I think you're up. So now of course it's their motion, so if they say, you know, we're making the following legal points and to do that, we only need the following facts, you're certainly welcome to say, well, that's not legally correct and that if you have those facts, you're still not correct legally, that's fine, we should have that debate, in the motion papers, but I guess the question becomes, what is the nature of the factual discovery that you're claiming you'll need to meet those legal arguments? We've already essentially heard Mr. Panopoulos say that for purposes of the briefing, he's willing to concede the points that you say that you're seeking discovery on. So if you can

address what's wrong with that argument, that will help.

MR. VOGEL: Certainly, your Honor.

First of all, the list that Mr. Panopoulos used to make his arguments is, as you can imagine, was used in our letter to the court for illustrative purposes and is not at all a complete list of what the factual issues are, because I could have gone on for pages. So starting with that premise as false, through our motion papers that we've already submitted on Clearstream's motion, we asked the court for discovery, and we tell the court that because this is a fact-intensive issue concerning the situs of the assets raised by Clearstream that we need discovery on these issues. But that in terms of responding to the motion, we claim that there are enough facts that have been disclosed to us already that the court should determine without doubt that the court has personal jurisdiction over Clearstream, and as a result, under the law and the legal analysis, because it has that jurisdiction, this is an intangible right, and under New York common law, the situs of the intangible right is wherever the garnishee can be found, and in this case we claim that Clearstream can be found here in New York and therefore the court has the power to order Clearstream to dispose of those assets as the court sees fit.

So in terms of -- let me start from the beginning. Mr. Panopoulos says that the issue of situs and the UCC are two alternative arguments. They are not alternative arguments.

The UCC, according to Clearstream, defines the nature of the property right. However, there is clear caselaw on the fact that the UCC does not -- does not address the situs of those property rights. That is left to common law, which is why we had 18 briefs submitted, because it's not as simple an issue. And the common law, among other things, as I said before, states that if you have jurisdiction over the garnishee, then you have the situs where the garnishee can be found.

Another argument is -- under New York law is that the nature of the property right, intangible right requires performance by various properties in order to get an economic benefit. So we did in our papers a fact analysis of why we believed that many of those, if not most of those, critical performances that are required by various parties to create an economic value in the owner of that property right all occurred near New York. And because we've been deprived of discovery from Clearstream as to instructions given to them to make these transfers as to instruction -- instructions that they in turn gave to Citibank here in New York and that Citibank in turn gave to correspondent banks here in New York for the benefit of the defendants to make, to transfer these funds out to them when funds -- when these bonds matured and funds were paid, all of that occurred here in New York. The bonds themselves are not actually --

THE COURT: But they may say to me, "We'll accept all

that happened," I suspect. I'll check in a second. And then they say to me, "Okay, all those things happened as you say in New York. That makes no difference legally." And they may be wrong, but it doesn't mean that we need to determine those facts in order to decide their argument on the motion.

MR. VOGEL: Well, that's not entirely true because it's a fact-intensive analysis, and if you look at the cases that are cited in all of our briefs, there are important factors in each one, and we can't guess at what those facts are and say, well, we believe that all of these things happened. I mean, they either are the facts or they're not, and we're not going to know that if the facts are in their possession.

THE COURT: But you could imagine the best possible fact situation for you, and if they say it doesn't matter, then we can at least resolve it on those grounds, if you're right.

MR. VOGEL: I guess the best possible fact situation is that the account was open here in Manhattan, that representatives from Markazi came to Manhattan and met with people from Citibank and from -- and from Clearstream and that they had all kinds of communications with this forum in terms of e-mails and all kinds of transactions, but I'd be lying to the court if I made up facts. I can't just make up facts from whole cloth. And the caselaw clearly indicates that it's an intensive analysis.

For example, I'll just give you one case, where the

court found that the situs of the asset was I believe in Argentina. I think it was a Citibank case, in fact. It was Citibank's branch in Argentina. And in that case the account was opened by the Argentine government locally with Citibank in Argentina, they came and met regularly with representatives of that bank, they got investment advice at that bank. So all of these fact-intensive issues are relevant, and we can't possibly know what those are or guess at what they would be without doing discovery.

THE COURT: Right. No, but you can say in your brief just what you said to me, that all these fact-intensive issues -- I assume Mr. Panopoulos is going to say to me, none of that stuff matters, all that matters is the authenticity of this account agreement, and if it comes out of Luxembourg and it doesn't matter what other facts you came up with, that's not going to be relevant. He may be wrong.

MR. VOGEL: Well, if he's right on that law, then sure, that's correct, but I think the law is fairly clear that that's not the case in New York. It's a very fact-intensive analysis.

THE COURT: All right. Well, keep going. Assuming you were not finished. I thought I interrupted you.

MR. VOGEL: There may be more. Let me take just a quick look at my notes.

Oh, on the issue about the beneficial ownership and

Clearstream's knowledge of that, Clearstream's knowledge and when they had knowledge, had knowledge of the beneficial ownership only became relevant when we went to Italy and got discovery from UBAE that indicated that Clearstream knew that Markazi continued to be the beneficial owner of these assets once they were transferred to UBAE and has nevertheless stated to the contrary and before this court in June of 2008 and sent us on a wild goose chase for over a year and a half until we could find this out on our own, and all parts of the scheme to defraud creditors in the United States and to help Markazi hide its identity as the true owner of these assets here in New York and to help Markazi violate United States OFAC regulations and Iranian transaction regulations and -- that were passed against it at sanctions and that -- that became relevant once we learned that about when they knew about this, and we asserted in our amended complaint a cause of action for damages against Clearstream for 250 million because it was 250 million that they secured a release of back in June of 2008 by having -- by having failed to notify Clear -- Citibank that as Citibank participated in sending these assets out and selling them on behalf of and for the benefit of Markazi, they would be violating US law. Had Citibank known that, that money would never have gone anywhere and it would have been available for the creditors that are sitting here represented by counsel in this room to have -- to enforce their judgments. That's where

that issue becomes relevant, not necessarily on the motion that's now pending by Clearstream.

And in terms of whether our discovery at this point, your Honor, should be limited only to the pending motion or whether we should in tandem move the case forward and have additional discovery on the further issues so that when this motion is decided, if it's decided in favor of the plaintiffs, we will have moved along and gotten discovery and not wasted -- wasted further time, the issue about what they knew and when they knew it is relevant for further discovery.

Again, on the location of the assets, Clearstream incorrectly stated that the UCC provides for that. Just clearly not so. Caselaw has said so. The situs is determined by state law, and that's New York State law that applies.

And again, the activities relative to the assets that occurred in New York are relevant for the argument that I addressed with the court. So I think we need discovery on that issue, and particularly the new third-party defendants that have come into this case and have not had the benefit of three years of what I've been through doing discovery, certainly they're entitled to their say about what discovery they may need to address these motions.

THE COURT: I don't think I got any other letters from plaintiffs on this particular area of discovery, so I don't know if anyone wants to be heard about what facts they're

looking for beyond what Mr. Vogel said, but -- I don't know if there is anyone. So Mr. Panopoulos? Oh, I'm sorry.

MR. KREMEN: Your Honor, Richard Kremen on behalf of the Heiser judgment creditors.

Several points. One is that we are recent into the fray and there apparently has been discovery that has in fact occurred. We've gotten access to simply the documents that were attached to the pleadings, and in order to prepare our responses to the motions that have in fact been filed, we would like to get access to any discovery that has in fact been produced to date in this case.

The other point is a procedural issue. At this point we've issued various risks. Obviously there are various motions that have been filed at this point in time. But our risks are really not at issue, and I think there's a threshold issue at this stage as to whether or not they are in fact going to be filing risks -- filing motions with respect to the risks, for example, that we have issued or whether we are simply going to be asked to respond to the risks which really only goes to Peterson, and I would think that --

THE COURT: Are there issues, or you don't know?

MR. KREMEN: I don't know what issues they're going to be saying with respect to us, but at a minimum I think they ought to be clarified, and if in fact they are going to be relying on the same arguments, they ought to in fact be

required to make some type of pleading to make it clear what we are being asked to respond to, your Honor.

THE COURT: Pleading or a brief?

MR. KREMEN: A brief, or if they're going to --

THE COURT: A motion to vacate.

MR. KREMEN: Or motion to vacate, or whatever argument they're going to be raising, I think it needs to be clarified as to exactly what arguments are going to be raised with respect to at least the Heiser judgment.

THE COURT: Okay. Well, I guess on the first point, Mr. Vogel, I mean, I assume you're the person who has the discovery.

MR. VOGEL: I'm sorry, your Honor?

THE COURT: On the first point that was just made, access to discovery beyond what might be attached, is there some mechanism to do that?

MR. VOGEL: You mean access to the discovery that we have obtained?

THE COURT: Yes.

MR. VOGEL: Yes, of course.

THE COURT: So I assume that can be worked out.

MR. VOGEL: Yes.

THE COURT: That was the first point Mr. Kremen raised.

All right. On the second point, maybe this goes to

the issue of your briefing that was being raised in the letters. Frankly, I would be helped by rebriefing. I don't even have copies of the 18 briefs or whatever it is, and it sounds like if there were successive briefs, people were expanding on issues that were previously raised on other briefs, and I think it would be a big help for me, not to mention the other plaintiffs, if we can have combined in a single motion from Clearstream -- yes, Clearstream, not UBAE -- precisely what the threshold jurisdictional arguments are. You seem to be resisting that, Mr. Panopoulos.

MR. PANOPOULOS: No, not at all. Not at all. I agree. I'm more interested in page limits because I don't think we can do it in 25.

THE COURT: I don't have to have limits, so --

MR. PANOPOULOS: That's good.

THE COURT: I mean, I have faith in the lawyers not going on unnecessarily, but I don't want to set page limits and have them truncate their arguments. I want to have the full explanation.

MR. PANOPOULOS: And then there's the timing, but we could work out a schedule.

THE COURT: Okay. So you saw these letters from plaintiff on the briefing. It sounded like there was a dispute on that.

MR. PANOPOULOS: Well, with respect to the Heiser

plaintiffs, we would make the same responses. I mean, you know, basically, yeah, we would move to vacate on the same -- for the same reasons we have in the Peterson. That's why we brought them; that's why they were interpled.

THE COURT: For some reason I thought I saw in your letter plaintiff's rebriefings being expensive and time consuming. Do I remember that?

MR. PANOPOULOS: It is expensive and time consuming, but obviously if it helps the court --

THE COURT: Yes. And it will also help all the new plaintiffs that have come in in all the interpleader actions.

MR. PANOPOULOS: Obviously it would help them. I mean, yes, it would.

THE COURT: Okay. So at a minimum, it seems to me you should assume that everything in the past no longer is with us briefingwise and that you're going to do a new set of memoranda of law. You can use old affidavits as attachments, you can reference them, but the memoranda of law is what I really care about. So all these threshold arguments are in one place.

MR. PANOPOULOS: Sure.

THE COURT: Okay. Now, you know, I mean, I'm ready to start thinking about discovery issues. I just don't know that I've --

MR. PANOPOULOS: I'd like to just address a couple of aspects.

THE COURT: Sure.

MR. PANOPOULOS: One is that if you were to look at Tab 7 of our letter, Judge Jones' order -- I can read it to you, but on page 4 at the bottom, it states, "It is further ordered that Clearstream shall stipulate that all of the documents contained in the binder Clearstream produced and used at the June 27, 2008 hearing are authentic and admissible as business records." All right? So we did that. Those records are records about the opening of the account in Luxembourg, etc., etc. Frankly, it's disingenuous for me to hear from Mr. Vogel that there was an account opened in New York where Markazi showed up with Citibank and Clearstream, when all of these records are already in the record. But what I'd like --

THE COURT: Hold on. I think what he's saying is that in addition to those records, there could have been these other activities and he doesn't know what they are.

MR. PANOPOULOS: Okay. Well, that's not what I heard, okay.

THE COURT: Because he hasn't had discovery.

MR. PANOPOULOS: And secondly, if -- if the other plaintiffs are entitled to the discovery that Mr. Vogel has from UBAE in Italy, we would like access to that also, because we haven't had access to it either.

THE COURT: Any problem with that, Mr. Vogel? I mean, normally when one uses court process in obtaining discovery,

the law is that they're made available to everyone. So it's another principle that should apply to everyone here.

MR. PANOPOULOS: And my last point, your Honor --

THE COURT: Yes.

MR. PANOPOULOS: -- is that the documents that Clearstream put into that binder go to the issues that were raised in the Argentine case because they go -- the factors that the court enunciated there about where performance is etc., etc., that's what those documents talk about. So --

THE COURT: Okay. But I guess you need to have --

MR. PANOPOULOS: That will be in the brief.

THE COURT: Well, maybe we're going down the path you suggested, and I think it's a path, frankly, I prefer, just to put the argument on the table, which is to make this discovery position in the context of having the issues presented to me so that I can make a judgment about whether that discovery is going to make a difference for purposes of deciding the motion, and if it's not, then it's not necessary, and if it is, then I'll say that. I mean, that's what you want.

MR. PANOPOULOS: Yes. I think that's absolutely right.

THE COURT: I think Mr. Vogel wants to move this along, but --

MR. PANOPOULOS: Right. And in that context it will be specific, it won't be general, and we can talk about it.

And my last point, your Honor --

THE COURT: Go ahead.

MR. PANOPOULOS: -- is that, I just want to make the court aware that Bank Markazi's motion, which challenges the court's subject matter jurisdiction over the res, right, is also dispositive of this entire case, perhaps even of the restraints and of the turnover as well, and even if you were to -- even if the court were to find against Clearstream on the UCC issues, it would still have to deal with Bank Markazi's subject matter jurisdiction motion under the Foreign Sovereign Immunities Act, and I'm just raising that so the court is aware of that.

THE COURT: Does that apply to all the accounts?

MR. PANOPOULOS: All the accounts, yes, because we've assumed -- because you're assuming that everything has gone back to Markazi for purposes of the, you know, alleged fraudulent conveyance. And that was also, you know -- I mean, that's been briefed by Bank Markazi, at least in its opening motion. The other plaintiffs have yet to respond, but I do want to make the point.

THE COURT: Because there was a stay there as well.

MR. PANOPOULOS: That was stayed, yes. Yes. And that's it.

THE COURT: All right. I mean, there's enough threshold jurisdictional issues that I don't feel this is the

moment to explore that further. That moment may come when I read the other side's explanation in the context of motions when I've had better opportunity to consider it, but not at this moment at this conference.

So what I want, looking at this from the big picture, is to have a schedule that allows threshold motions for which whoever's making them is essentially going to concede any facts that the plaintiffs want and be able to say that that's irrelevant to their motion. I mean, that's within limits, obviously. You know, the account opening documents, they don't have to assume that that could be challenged. But, you know, that's the theory. The theory that there's going to be no factual disputes in the sense that we have no factual disputes on the motion to dismiss a complaint for failure to state a claim. You accept whatever it is that the plaintiffs want to allege or say that they might find in discovery and you make the motion that says, notwithstanding that, the case, you know, has to be dismissed. So I feel that has to be decided as soon as possible and in advance of freestanding discovery.

So that's my ruling with respect to the discovery issues.

Now in response to the motions to dismiss, the plaintiffs, you know, will say things that plaintiffs say in any case where there's a 12(b)(6) motion, which is you need to accept, you know, all the potential facts as being true. We're

at a little disadvantage here because there's no pleading under which they have alleged all these facts they say they could find in discovery, but I think the same principle is going to apply. And when I read the plaintiff's responses, I'll hear what they say could matter and why and then the defendants will say, well, none of that matters or they'll say, you know, you got us and you're right, that is going to be relevant and there's a dispute on it, factual dispute on it and plaintiffs are entitled to discovery and they will have some argument on that point.

So with those parameters, I'd like to figure out who should be moving when and on what schedule. I already said there's no page limitations. So I'm open to proposals.

Mr. Vogel, since you got the bad news, what's your view as to how we should proceed?

MR. VOGEL: Well, I suppose Clearstream is going to need time to put this all into one concrete brief. I know that there was an application or a proposed application by Markazi to amend its brief to talk about the new Second Circuit opinion, which is perfectly legitimate, but my concern is that the request is somewhat broad in their proposed order about what they're going to include in an additional brief and --

THE COURT: You mean Bank Markazi or someone else?

MR. VOGEL: Bank Markazi. And --

THE COURT: Maybe I should hear from them first and

we'll see what they want to brief on.

MR. VOGEL: Certainly.

THE COURT: Will that help, Mr. Vogel?

MR. VOGEL: Yes, and then I won't have to speculate.

THE COURT: Okay.

MR. LINDSEY: Your Honor, there was a reported Second Circuit decision over the summer that helped define the immunity with regard to central banks. My client, Bank Markazi, is a Central Bank of Iran. I think it would be helpful, frankly, if we redraft our brief. I think it would be much shorter now. I think the issues are crystallized a great deal. The thrust of the complaint currently before the court talks about alterego, talks about my client is the alterego of the government of Iran. Second Circuit has said that's irrelevant. So I don't know if they plan to replead their complaint as well, but if I can rewrite my brief, it will be much shorter, much more focused based on that decision. I would say two of the three affidavits that went with my motion to dismiss will probably be eliminated now.

THE COURT: Do you want to amend your complaint or no?

MR. VOGEL: Your Honor, I was just going to address that. Our complaint was drafted on the basis of a footnote in a Second Circuit opinion in the same case where the Second Circuit said that had the plaintiff alleged alterego, they might have had a claim. So we focused on alterego, and then of

course the Second Circuit changed its mind a few months ago. So although there are facts currently in our pleading that I think adequately support the 1611 issue, we could probably make it more clear and probably ought to have the opportunity to do so.

But I guess my question for Markazi's counsel was, aside from the Second Circuit opinion that they want to address, their proposed order seems to say that they want to also talk about other briefs that they have now gotten access to that they didn't previously have access to because they were sealed, and my concern is that under Rule 12, you're only allowed one motion to dismiss, and you can't have a second bite at the apple. So if now they're alleging new things that they would be -- that would be violated with Rule 12, I would certainly like that they be limited to what's permissible under Rule 12(g)(2).

THE COURT: Well, if you're doing an amended complaint, I think the concern dissipates, does it not? Or you want to do an amended complaint; right? It's up to you. I'm not going to force you.

MR. VOGEL: Yeah.

THE COURT: Yes, you want to.

MR. VOGEL: Yes.

THE COURT: All right. So you do an amend complaint, and I think the clock is reset to zero and they file a motion,

right, they can say what they want in response.

MR. PANOPOULOS: Your Honor?

THE COURT: Yes.

MR. PANOPOULOS: If he files an amended complaint, Clearstream would still consider that any response to that amended complaint is stayed as to it until the threshold issue under the -- that we've been discussing is decided.

THE COURT: Yes. I mean, the same principle would apply there.

MR. PANOPOULOS: Thank you, your Honor.

MS. SCHNEIER: Your Honor, I would just join in that request, which is what Judge Jones had previously ordered.

THE COURT: Yes. The theory -- I'm just going to have to try to put this together. I was originally starting with the motion. But now we're starting with the amended complaint. There's going to be an amended complaint filed on the turnover proceeding. Then I would say simultaneously we get the motion to dismiss the amended complaint, along with the Clearstream rebriefing of the motion to vacate the restraints, and then anybody who wants to respond to those, which would include all the new plaintiffs, and all the new plaintiffs would then respond, and then there would be reply briefs? Does that make sense?

MR. PANOPOULOS: Yes.

THE COURT: So first date is when you want to file

your amended complaint.

MR. VOGEL: We can do that within 30 days, your Honor.

THE COURT: Yes.

MR. PANOPOULOS: But we'll go ahead and work -- file our motion irrespective of the amended complaint -- I mean, his amended complaint. The amended complaint is about --

THE COURT: Your issues are completely divorced from their issues, from Banca UBAE and Bank Markazi's issues.

MR. PANOPOULOS: Yes. With respect to the amended complaint. Our issues under the UCC, right --

THE COURT: With respect to anything. Are there similar issues coming out of both of you?

MR. PANOPOULOS: Okay. Yes, there are. It's a claim against Clearstream directly, right, against it for being involved in a fraudulent conveyance. They've alleged that also against UBAE in the amended complaint. That has nothing to do -- well, let me put it this way.

THE COURT: You want a stay on that, just the way Judge Jones gave it to you.

MR. PANOPOULOS: Right, yes, because if you decide the UCC issues and the situs issues, it goes away.

THE COURT: So we should have two schedules, one the motion to dismiss the amended complaint and the other the rebriefing on the motion to vacate. Is that your point?

MR. PANOPOULOS: Ms. Erb is indicating consolidated

briefs by the plaintiffs on, yes, two separate tracks, our motion, amended complaint, responses, to which ours and Citibank's is stayed, and then consolidated briefs by the plaintiff --

THE COURT: Wait. That was too fast. Say it again? Amended complaint?

MR. PANOPOULOS: Amended complaint, as to which Clearstream and Citibank, any response is stayed until the motion referred to your Honor is decided. And then with respect to the -- with respect to our motion to vacate the restraints, we would like a consolidated brief by all of the plaintiffs.

THE COURT: In response.

MR. PANOPOULOS: In response. Obviously we'd put one in.

THE COURT: Okay. So Mr. Vogel?

MR. VOGEL: Your Honor, there's a procedural problem here, and maybe it's just me and I'm missing something, but we raised this as a defense to the interpleader petition filed by Citibank. Technically the interpleader petition is only against the new third-party defendants and the original parties to the Peterson plaintiffs' turnover complaint, which includes the three banks, Iran, and of course the plaintiffs. There's no connection between the two. They're just kind of floating before this court, but there's no pleading inter --

THE COURT: Wait. Make sure I understand that. The interpleader doesn't mean you and the original people; it just means all these new people who I am mentally aligning with you but you're calling third-party interpleader --

MR. VOGEL: Defendants.

THE COURT: -- interpleader defendants.

MR. VOGEL: Correct.

THE COURT: And tell me what the problem with that is.

MR. VOGEL: Well, the problem is, the proper way to commence an interpleader --

THE COURT: Is to have everybody included.

MR. VOGEL: -- is to name everybody, but because you're not starting a new action, the way to do is to put in a counterclaim against the plaintiff, cross-claims against the banks, who have expressed an interest in --

THE COURT: I'm sorry. Counterclaims meaning, did you sue Citibank?

MR. VOGEL: Yes. Citibank is a defendant.

THE COURT: In your turnover proceeding action.

MR. VOGEL: Correct.

THE COURT: You think that's the only way there should have been a counterclaim is turnover.

MR. VOGEL: That's clear law to that effect. Otherwise we're not a party and none of the other banks are parties. They haven't been named.

THE COURT: So they should amend their interpleader action to name you?

MR. VOGEL: I think that they -- no, it shouldn't be that way, because we commenced this action by a turnover. The proper way, the proper procedure for them to do it is to counterclaim against us, cross-claim against the other banks, and then the interpleader defendants now, if they want to assert claims against these funds, can do so. Otherwise, they can't do it because they've been named as third-party defendants to an action where the assets are not even at issue and they can't -- the other defendants, the banks that hold these assets, are not parties to that. And in particular, Clearstream, who is the garnishee.

THE COURT: I mean, I think we're in uncharted territory because they were instructed to file an interpleader action in this docket.

MR. VOGEL: Well, that's correct, your Honor, but if you look at that, if you look at that order, the order says that Citibank had, in its discretion, commenced an interpleader, a petition including counterclaims, cross-claims, etc., etc. It was up to Citibank to do it if they wished to do it. It was in their discretion. They chose to do it. And they did it wrong. They have an obligation to follow the rules of civil procedure. Otherwise, we're -- this -- you can decide, your Honor can decide whatever your Honor wishes, and

this whole thing could be unraveled on a simple procedural issue on appeal because none of these, the other judgment creditors are really parties to this entire action, nor are the other banks that express an interest in it. It's not a true interpleader.

THE COURT: Are you worried about it being unraveled on appeal?

MS. SCHNEIER: No, your Honor, I'm not. I think the purpose here was to bring before the court all the parties that have an interest in this case so they can have an opportunity to be heard, and that's what's happening here. Only Mr. Vogel has raised this issue with me. He said he was going to send me some authority to this effect, and I have not seen it. We had this argument before Judge Jones and it didn't -- it didn't go anywhere, but, you know, I'm not sure I understand what the --

THE COURT: This was raised before Judge Jones?

MS. SCHNEIER: Yes. And that was -- and the purpose --

MR. VOGEL: No.

THE COURT: We're getting a no, but that's okay.

MS. SCHNEIER: But the purpose of what Judge Jones wanted here was to bring before the court all of the different parties so they could have an opportunity to assert their claims, and they have asserted counterclaims and cross-claims against Citi, Clearstream, and so the only one who's been

raising this -- and I'm not -- still not sure exactly why -- has been Mr. Vogel. So --

THE COURT: Well, I'll take him at his word that it will unravel on appeal, but if we consolidate for all purposes these actions, which effectively they are, I think by virtue of the docket, everyone gets noticed. What could the possible claim be from the plaintiff? There's no lack of notice; right?

MR. VOGEL: It's not a lack of notice, but there's no just no pleading that forms the basis of the claim, so the way I learned it in law school, civil procedure, is, you've got to have a complaint and an answer for every claim, okay? So you've got a bunch of claims here that are not represented by pleadings. If the court wants to leave it the way it is, that's up to the court. I just -- I just don't see it. It just doesn't make sense to me. It doesn't follow the rules of civil procedure.

THE COURT: Yes.

MR. PANOPOULOS: I would agree that consolidation is probably the way to go, your Honor.

THE COURT: Well, I guess it's hard to believe that with everyone given notice to address each of the claims and actually being a party -- everyone we care about is a party to this proceeding. They will all be given notice. Consider everything consolidated. I think the niceties of whether this should have been counterclaims or a separate action at that

point don't matter.

So Mr. Vogel, I'm not concerned. I thank you for raising the issue.

We were going down the road of giving a date for your amended complaint. So let's start on two tracks. And you wanted I think 30 days, which would be November 30th. Mr. Vogel, that's all right for you?

MR. VOGEL: Yes.

THE COURT: Okay. File your amended complaint. And then previously existing stay to respond to that complaint by Citibank and Clearstream is going to be stayed. Then we're going to get the motion to dismiss from both banks or just one?

MR. COLELLA: Your Honor, may I be heard. Perhaps there's no accident today that I'm sitting between all the parties because Banca UBAE really doesn't have a bone to pick on the underlying issues you've been hearing. We've had a personal jurisdiction motion, essentially a personal jurisdiction motion on file against Peterson since May, we filed the cross-claims filed by the other creditors, creditors. Only the Acosta and Greenbaum plaintiffs cross-claimed against us. We filed a motion to dismiss that on similar grounds on September 27th. And if you're going to go with two tracks, we would want the plaintiffs, the Peterson plaintiffs and the Acosta/Greenbaum plaintiffs to respond on the date they file the amended complaint, on November 30th, and we can then

reply shortly after that. Because our -- we don't have anything more to say than what we've already said in our motions, and there's absolutely no connection between our bank and this -- and these transactions that are being discussed with the United States. And I think that's going to be undisputed. But we'd like to -- they haven't given us their theory of personal jurisdiction yet, yet it's invisible in the pleadings because there really isn't any prima facie case made other than the fact that there's only one claim made against us and that's on the 250 million, and it doesn't dispute that that transaction occurred in Luxembourg, and we had no -- we had no --

THE COURT: Okay. Well, it sounds like if the defendants were successful, Clearstream were successful, this is going to go away. Am I right, Mr. Panopoulos?

MR. PANOPOULOS: Yes.

THE COURT: UBAE then goes away.

MR. PANOPOULOS: Yes.

THE COURT: So I guess the question is whether this issue should be briefed now. Should that be briefed now? I don't know. It's just going to delay what we really want to do, which is clear out whether this case is staying or not.

MR. COLELLA: But if Clearstream doesn't prevail, then we're going to sort of be back in on the same issues and so we would -- again, we think our issues are very straightforward,

very simple.

THE COURT: I know, but if this case goes on, then you are one of 50 other things that are going to start happening. The question is, why should we brief your thing up front?

MR. COLELLA: Because this case is hanging out there against the bank and --

THE COURT: I know. Just as plaintiffs are suffering not having discovery, you may have to suffer putting off your motion to dismiss until we have this question answered. That's my point.

MR. COLELLA: Will it be stayed against us too, pending the resolution of the Clearstream issue?

THE COURT: Yes.

MR. COLELLA: Okay. If that's how your Honor wants to proceed, we're not going to have an objection to that.

THE COURT: Okay. So --

MR. FLEISCHMAN: Your Honor -- oh.

THE COURT: Go ahead.

MR. FLEISCHMAN: But I'm not going to interrupt you, your Honor. Go ahead.

THE COURT: Well, no. Go ahead. Just identify yourself.

MR. FLEISCHMAN: Yes. Keith Fleischman for the Valore judgment creditors, plaintiffs. We have a couple of hats. Do I understand the court that for the amended complaint -- and

this may solve any jurisdictional problem -- that all of the judgment creditors can join that amended complaint with the Peterson plaintiffs?

THE COURT: Mr. Vogel?

MR. VOGEL: Your Honor, I only just heard that suggestion a moment ago, and certainly something that could be done. I mean, there are issues about -- potential issues about which of the plaintiffs have what kind of rights with respect to this asset based upon what kind of enforcement proceedings they have historically undertaken, but I suppose we could somehow deal with that in a single pleading. It may get rather lengthy, but it could be done.

THE COURT: Anyone else have any views on that? If there's no objection, I'll simply allow it.

MR. LINDSEY: No objection by Bank Markazi, your Honor.

MR. PANOPOULOS: No objection by Clearstream.

MR. COLELLA: No objection by UBAE.

THE COURT: Okay.

MR. KREMEN: Richard Kremen again on behalf of the Heiser judgment creditors. I'm not sure I understand exactly, you know -- we all have individual interests and, for example, you had mentioned earlier -- somebody mentioned it ought to be consolidated briefs. You know, we all have our own -- our own interests, we all have our own priorities. There certainly are

similar issues that can in fact be consolidated for the ease of the court, but I'm concerned about how you go about filing an amended pleading when we're not under any kind of a cooperation agreement or any kind of agreement amongst ourselves.

THE COURT: I wasn't going to require it. I thought someone was asking for permission. Were you planning to file a complaint, a turnover complaint?

MR. KREMEN: No, your Honor. We were going to leave it as it stands right now. We can file a turnover, but I think it would be individual, not as an amended pleading.

THE COURT: Well, and I didn't mean to say that this was going to be required.

So I guess going back to you, Mr. -- I'm sorry.

MR. FLEISCHMAN: Your Honor, Keith Fleischman.

THE COURT: -- Mr. Fleischman, did you wish to file -- it sounds like not every third-party defendant, whatever I can call you, is interested in filing a turnover at this point.

MR. FLEISCHMAN: Your Honor, we may, but I'd like to explore it with counsel for the Peterson plaintiffs.

THE COURT: Okay. Well, why don't we just leave it that way. If you folks reach an agreement, fine; if not, that's fine too.

MR. FLEISCHMAN: Thank you, your Honor.

MS. SCHNEIER: Your Honor, may I just raise one thing about that, one little thing?

THE COURT: Yes.

MS. SCHNEIER: One of the situations we had and I think one of the things that Judge Jones tried to do here is not have all of these duplicative actions pending. The Heisers had filed another action in another case and you've had them, you know, sort of consolidated -- I'm speaking sort of loosely here -- and that was one of the reasons for the interpleader proceeding so everything would be brought in one, you know, proceeding, and notwithstanding, you know, Mr. Vogel's complaint exactly about how it was done, we are all together and every -- and I just don't want to have what we've had before, which is a lot of different proceedings and a lot of different complaints. That was part of the purpose of the interpleader here.

THE COURT: Well, I guess I don't really understand the need for a turnover complaint given the interpleader. I mean, certainly the original plaintiffs --

MS. SCHNEIER: If they can all come together, I don't have a problem. I just don't want to have --

THE COURT: But it's hard to force a party to join a complaint. I mean, I have no problem consolidating the briefing so that you can do one brief to respond to all the complaints, which presumably will have similar allegations with similar principles that you would use to address them, but I don't know whether I can stop them from filing a complaint.

MS. SCHNEIER: Well, I think that was, you know -- we dealt with this with DLA Piper before, that to try to stay these other actions, and since all of these issues are already -- as to these assets are already before this court --

THE COURT: And I have no problem staying it. I agree with you on that.

MS. SCHNEIER: Okay.

THE COURT: If that's all you care about. Talking very technically about the requests to file a complaint.

MS. SCHNEIER: In this case, the filing in this case.

THE COURT: In this case. Not that it's going to stop people from filing complaints in other cases, but I think it should be filed in this case, obviously, and you could then deal with the stays, if necessary. Whatever stay is going to exist as to the Peterson's complaint certainly should exist as to any other complaint.

MS. SCHNEIER: I just think simple and keeping it together will be better. I think that's what we've been working towards. I'm not sure what Mr. Kremen has in mind, but --

THE COURT: Well, you didn't want to file it, so you're fine.

MR. KREMEN: Your Honor, I'm not sure what the comment is. We're here today before this court in this case and, you know, all I was saying was that I'll think about whether I'm

going to file an amended complaint or whatever I'm going to do. All I was trying to say was, at this point in time there is no agreement that exists amongst the various plaintiffs and I didn't want to suggest to the court that we were agreeing that there would in fact be one, quote-unquote, amended pleading that would in fact incorporate all the parties.

THE COURT: That's fine. And for all we know, there may be the amended complaint only involving the Peterson people. I don't know that anyone even needs to file amended complaints given the interpleader action, but I don't think I have to decide anything on that right now.

Let me try to go back to the schedule. So we made it as far as amended complaint to be filed by November 30th by the Peterson people. We're going to have the same stay as previously. I guess my proposal is to stay as to UBAE also the time to respond because they're not going to have this threshold jurisdiction issue right now that I'm trying to deal with as quickly as possible. So that leaves Markazi?

MR. LINDSEY: And as far as refiling motion to dismiss, we would ask, with the holidays, into January if we could, your Honor, maybe mid January.

THE COURT: I don't have a calendar.

MR. LINDSEY: I don't have one. It's in my phone downstairs.

(Discussion held off the record)

THE COURT: 17th?

MR. LINDSEY: That's fine, your Honor. Thank you.

THE COURT: All right. And then I'll give you February 17th for response? And then how much do you want for reply brief? Three weeks?

MR. LINDSEY: Three weeks would be fine, your Honor.

THE COURT: March 11. Okay. So that's set.

Now I need a schedule from you on your consolidated thing that doesn't require any prior brief.

MR. PANOPOULOS: Friday, December 17th? I think that's the Friday.

THE COURT: Okay. Response was January 17th? And then reply February 10th.

MR. VOGEL: Your Honor, the period between December 17 and January 17th has a number of holidays --

THE COURT: Okay. No problem.

MR. VOGEL: -- if we can push that out a bit.

THE COURT: December 17th is a Saturday.

MS. ERB: Oh, 16th.

THE COURT: December 16th is a Friday.

MR. PANOPOULOS: Okay.

THE COURT: So January 31st, is that enough time?

MR. VOGEL: I think so, your Honor.

THE COURT: Okay. And reply, February 21. And I don't view the response to the motion to dismiss as including a

motion to compel discovery or however it was framed in the order. The response to the motion to dismiss will be an explanation of what discovery you didn't get and why, you know, what it could show theoretically and why that's relevant and means that the motion to vacate can't be granted. Everything I just said was about the motion to vacate.

So Mr. Vogel, do you understand now?

MR. VOGEL: Yes, your Honor.

THE COURT: Are we perhaps done or is there more?

MR. PANOPOULOS: One other matter, your Honor.

THE COURT: Don't worry. I'll give you all a chance.

MR. PANOPOULOS: Well, I'll let --

MR. KREMEN: Your Honor, I just wanted to understand the court's statement. Again, they're going to be filing their motion to vacate.

THE COURT: Right.

MR. KREMEN: Is the court saying to us that we only have one consolidated response or can the individual judgment creditors file their own pleadings if they want to rather than just simply relying upon Mr. Vogel?

THE COURT: Oh, certainly file your own pleadings. You should all do it on the same date, but I can't imagine why --

MR. PANOPOULOS: Richard, are you saying pleading or briefing?

THE COURT: No, not pleading. You mean response to the motion to vacate.

MR. KREMEN: Yes. It was getting back to the comment you made earlier about a consolidated response.

THE COURT: I heard that as a single plaintiff generally responding and maybe they meant it as one response. Did you mean one response?

MR. PANOPOULOS: It would be good if it was one response, but you can't force them.

THE COURT: It would certainly help me if there was one response. It would be great if Mr. Vogel circulated his brief in advance and then you could just write a letter saying "I join in full" or not in full the arguments or "I join only these arguments" or whatever it is.

MR. KREMEN: Your Honor, we're not going to try to duplicate anything. All I want to do is keep the option open. We have individual arguments. We want to keep the right to file our individual arguments.

THE COURT: Yes.

MR. PANOPOULOS: The matter I wanted to raise, so I understand that Clearstream's response to the amended complaint continues to be stayed, and what about our response to the other turnover motions? For example, Mr. Kremen has filed a turnover complaint against Clearstream in another action. That turnover complaint in that action was one of the reasons why

they were interpled. I don't know --

THE COURT: Where is the action pending?

MR. PANOPOULOS: It's pending before Judge Batts, and Judge Dolinger is the magistrate on the case and, you know, I've reached out to Mr. Kremen to, you know, come to terms about whether, you know, that turnover complaint could be consolidated with this one or withdrawn and, you know, we can't reach terms but, you know, I -- it doesn't work if we're going to have to respond to other turnover complaints that would require us to respond in the same way as we would here to the same legal and fact issues. The restraints and the writ of execution in that turnover complaint concern the same assets as here, the restrained assets in the omnibus account.

MR. KREMEN: Your Honor, the action has been filed. They've not even responded to the action. At this point --

THE COURT: You filed as a turnover.

MR. KREMEN: As a turnover, and they've never even answered it. It's just simply sitting there, and my understanding is that they've requested another extension of time, so they're not really duplicating.

THE COURT: Do you have any, objection assuming Judge Batts is on board, consolidating that with this case?

MR. KREMEN: I think the action can simply be stayed at this time and we can proceed in this forum.

MR. PANOPOULOS: Sure. If you're willing to stay the

action until the decisions are done in this case, that's okay with us for now.

THE COURT: Okay. Why don't you do a stipulation. If for some reason Judge Batts has a problem with that, having a case sitting on her docket indefinitely, we can talk about whether something else should happen.

MR. PANOPOULOS: Should we address the stipulation to Judge Dolinger, your Honor, or Judge Batts?

THE COURT: Send it to me, and depending upon what the referral is --

MR. PANOPOULOS: Right, okay. We'll get it.

MS. SCHNEIER: That would apply to us as well.

THE COURT: Yes. Same thing for Citibank.

Okay. I'm hoping that someone will present this to me in an order and form that I can use. But maybe Mr. Panopoulos can just circulate a proposed order and then take any comments and send it to me, and if people have objections, they can send a letter as well. Is that all right?

MR. PANOPOULOS: That's fine, your Honor.

THE COURT: Before you do that, I'll hear from anyone who wants to be heard. So does anyone else wish to be heard on anything?

MR. FLEISCHMAN: Your Honor, just procedurally, so you're not going to issue a minute order on this, you're going to wait for --

THE COURT: Yes. I think I'd like to have something so that the world knows what's going on.

MR. FLEISCHMAN: Thank you, your Honor.

THE COURT: All right. And --

MR. PANOPOULOS: Yes. The cross-claims and the counterclaims that were asserted -- well, the cross-claims have been asserted against Clearstream by some of the plaintiff groups that have been interpled and counterclaims against Citibank, Judge Jones stayed those responses as well, and we would just ask that they also be stayed. I'll put it in the order.

THE COURT: Yes. Those will be stayed.

MR. LINDSEY: Your Honor, the same as to Bank Markazi.

THE COURT: Okay. Yes.

MS. SCHNEIER: Citibank too.

THE COURT: Yes.

MR. KREMEN: Your Honor, I heard a comment about also in reference to Citibank. I assume we're only talking about the Clearstream matters.

MS. SCHNEIER: Yes.

THE COURT: Anything else from anybody? Yes.

MR. VOGEL: Your Honor, I just want to have some clarity on the names of UBAE and Markazi. Are those now being decided still? We're in the process of redacting the historical pleadings in this matter. It's taking an inordinate

amount of time --

THE COURT: Basically it's just their two names, probably.

MR. VOGEL: Their two names and all the other stuff. The other stuff, there's no question it should be taken out. But the question is, do we or do we not continue to keep their names out of the pleadings?

THE COURT: I'm hoping that the United States of America will solve this problem for us. Mr. Jones, are you still here?

MR. JONES: I am, your Honor.

THE COURT: When do you think we might get your letter?

MR. JONES: I can write it fast. I just need someone to tell me what to do.

I'll speak to them later today. It would be very helpful to know, as I discuss this with them, if anyone believes there's any other basis for the banks' names not to be public, because --

THE COURT: Other than Judge Lambert's order, you mean, or whatever it is that started this?

MR. JONES: Yeah, your Honor, you know what, I don't even know --

THE COURT: Maybe you can answer this question, which is whether they have any objection to it. I think that might

help.

MR. JONES: I'll put that to OFAC. I guess I would just invite anyone who believes that OFAC could perceive a problem to tell me. That would be helpful.

THE COURT: All right. Anyone who wants to address the OFAC on this matter should write to Mr. Jones by Wednesday, 5 p.m., okay?

MR. FLEISCHMAN: Your Honor, Keith Fleischman. Just as a practical matter, this is open court. This is a public forum. It's done already, and I just -- I find it a little strange, but I understand -- it's almost a procedure that's moot because this is open court. There could be -- anyone could be sitting in here, and these names have been repeatedly stated.

THE COURT: I think I said that at the beginning.

MR. FLEISCHMAN: I know. I just don't understand. I guess, your Honor, you have the power right now to say that at this point any confidentiality has been waived.

THE COURT: I believe I do have the power. I'd still like to hear from the government though. I gather that we have not heard objections from Banca UBAE or Bank Markazi.

I'll take silence as no objection.

Yes.

MR. PANOPOULOS: Just on that point, your Honor, I just want to clarify that the protective order has been

supplemented by other orders of the court, by Judge Koeltl and then Judge Jones, with respect to banking secrecy information from Clearstream. And that information is, you know -- doesn't fall under the rubric of the protective order or the information that OFAC gave to the plaintiffs. So even though, you know, Bank Markazi's name and UBAE's name may be unredacted from the pleadings or in the open, that doesn't mean that any of the other banking secrecy information that's been, you know, produced here can be made public at all.

THE COURT: That's correct. I'm just talking about these two names for purposes of filing.

MR. COLELLA: And your Honor, just on behalf of UBAE, we still have a pending motion in front of Judge Jones, and we're not waiving our rights to points made there, which involve the Italian proceedings and all of that information remaining under the protective order. As I understand the court, you're just talking about the names in the pleading.

THE COURT: And the motion papers and any filings.

MR. COLELLA: Right.

THE COURT: Any other issues from anybody?

Okay. Thank you.

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